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INTRODUCTION

This is a follow-up to the City Auditor's presentation on booking fees which he made to the Finance Committee on December 14, 1994, and the City Council on January 10, 1995. This follow-up concerns the section of the California Government Code that provides for persons to reimburse an arresting agency, such as the city of San Jose, for booking fees incurred because of an arrest that resulted in a subsequent conviction. We conducted this review in accordance with generally accepted government auditing standards and limited our work to those areas specified in the scope and methodology section of this report.

This is our second follow-up project on booking fees. Both follow-up projects were the result of an audit report we issued in November 1993--An Audit Of The San Jose Police Department's Operation Support Services Division. We completed our first follow-up in December 1994. In our first follow-up, we addressed (1) the high levels of staffing and costs of certain areas that the county of Santa Clara included in its booking fee calculation, (2) the inclusion of certain functions in the county of Santa Clara's booking fee calculation that did not seem appropriate, and (3) the county of Santa Clara's system of calculating booking fees. As a result of our efforts, the Santa Clara County Board of Supervisors and all of the city councils in Santa Clara County approved an agreement that established a flat booking fee amount for three years commencing in 1994-95. In addition, the agreement provided a clear and simple methodology for establishing a booking fee amount for an additional three-year period ending in 1999-2000. This agreement saved the city of San Jose approximately \$4.2 million dollars in booking fees for the period of 1993-94 through 1995-96.

SCOPE AND METHODOLOGY

The objectives of this review were to

- Determine how much the city of San Jose (City) is currently receiving in booking fee reimbursements from those persons who are convicted of the crimes for which the City arrested them;
- Determine what options are available to the City with respect to collecting booking fees; and
- Estimate how much in additional booking fee reimbursements the City could collect annually.

Our review included interviewing various staff members in the Santa Clara County Department of Revenue, the Office of Budget Analysis, the Superior Court, the Municipal Court, along with the presiding judge of the Santa Clara County Municipal Court. In addition, we reviewed applicable sections of the California Government Code along with various written procedures and memoranda addressing the area of booking fee reimbursement. Finally, we utilized arrest information obtained through the audit we conducted two years ago to estimate the population from which the City could receive booking fee reimbursement.

To complete our review of receiving reimbursement of booking fee costs from convicted persons, we utilized information from the California Department of Justice, Law Enforcement Information Center (LEIC). We did not perform any testing to determine the accuracy and reliability of the information obtained from LEIC. However, based on the work we performed on booking information during our audit of the San Jose Police Department's Operation Support Services Division, we believe that the information retrieved from LEIC is generally valid and reliable.

BACKGROUND

Since July 1, 1990, California State law has allowed a county to collect fees from an arresting agency, such as the city of San Jose (City), for the administrative costs of booking and processing arrested persons. California Government Code section 29550 states,

A county may impose a fee upon a city . . . for reimbursement of county expenses incurred with respect to the booking or other processing of persons arrested by an employee of that city . . . where the arrested persons are brought to the county jail for booking or detention. The fee imposed by a county pursuant to this section shall not exceed the actual administrative costs, including applicable overhead costs as permitted by federal Circular A-87 standards, incurred in booking or otherwise processing arrested persons.

From July 1, 1990, to June 30, 1994, Santa Clara County collected from the City approximately \$14,660,000 in booking fees. Assembly Bill (AB) 2286, which Governor Wilson signed into law on October 6, 1993, revised various sections in California Government Code section 29550. These new guidelines went into effect January 1, 1994.

One of the most significant changes was the revision to the language contained in section 29550.1 which allows the arresting agency to recover from a convicted person the actual administrative costs of his or her booking and processing.

FINDING I

THE CITY OF SAN JOSE CAN RECOUP AN ESTIMATED \$468,000 IN BOOKING FEES ANNUALLY AND \$825,000 ON A ONE-TIME BASIS

In November 1993, the City Auditor's Office issued a report on An Audit Of The San Jose Police Department's Operations Support Services Division. In the audit report, we made a recommendation that the City Attorney's Office, the City Manager's Budget Office, and the San Jose Police Department (SJPd)

- Implement procedures to recover the administrative costs of booking arrestees from the convicted persons as prescribed in the new state guidelines.

To date, this recommendation has been outstanding for sixteen months. In order to determine why this recommendation is still outstanding, we contacted the Superior and Municipal Courts of Santa Clara County. The courts informed us that the city of San Jose (City) does not file necessary affidavits (notices of booking fees due) when it files complaints against defendants with the District Attorney's Office. In addition, we found that both courts have procedures that address the issue of ordering reimbursement of the booking fee costs to the arresting agency. We also contacted the presiding judge of the Municipal Court who stated that, if the City should decide to start filing affidavits, each member of the bench will consider the City's request when arriving at a disposition decision. Finally, once the SJPd begins to file affidavits, the City needs to establish a billing and collection process to ensure that convicted persons reimburse the City for booking fee costs. We estimate that the City could recoup \$468,000 annually and \$825,000 on a one-time basis if it filed affidavits when it filed complaints against defendants with the District Attorney's Office and established a billing and collection process for booking fees.

**The City Of San Jose Currently Does Not
File Affidavits With Complaints**

In November 1993, the City Auditor's Office issued a report entitled An Audit Of The San Jose Police Department's Operation Support Services Division. In that audit report, we noted a section of California State law that went into effect January 1, 1994, which changed a number of areas with regards to booking fees. Significantly, the new law allows an arresting agency to recover from a convicted person the actual administrative costs (booking fees) of his or her booking and processing. Section 29550.1 of the California Government Code states the following:

Any city . . . whose officer or agent arrests a person is entitled to recover any criminal justice administration fee imposed by a county from the arrested person if the person is convicted of any criminal offense related to the arrest. A judgment of conviction shall contain an order for payment of the amount of the criminal justice administration fee by the convicted person, The court shall, as a condition of probation, order the convicted person to reimburse the city . . . for the criminal justice administration fee. [Emphasis added]

Prior to its revision, section 29550.1 had the word "may" where the word "shall" is emphasized in the excerpt above. By changing "may" to "shall" in section 29550, the legislature apparently wanted to make the court ordering a convicted person to reimburse an arresting agency for booking fees mandatory as opposed to discretionary.

In our audit report noted above, we recommended that the City Attorney's Office, the City Manager's Budget Office, and the San Jose Police Department

Implement procedures to recover the administrative costs of booking arrestees from the convicted persons as prescribed in the new state guidelines.

As of April 1995, this recommendation has been outstanding for sixteen months. Through our recommendation follow-up process the administration has noted that the SJPd, the City Manager's Office, the Budget Office, and the City Attorney's Office have been working, to varying degrees, on this area. These efforts notwithstanding, this recommendation is only partly implemented.

In order to determine why this recommendation is still outstanding, we contacted the Superior and Municipal Courts. The courts informed us that the City does not file necessary affidavits (notices of booking fees due) when it files complaints against the defendants with the District Attorney's Office. Therefore, the staff at both courts do not have an affidavit on file as a source for informing the judge on a particular case that the City is requesting that the person arrested reimburse the City for booking fee costs. To determine the importance of providing an affidavit, we asked the courts to share with us their procedures for the reimbursement of booking fee costs.

**Superior And Municipal Court Procedures
For Reimbursement Of Booking Fee Costs**

When we asked the Superior and Municipal Courts how they utilize the affidavits, they provided us with their current procedures with respect to the court ordering a convicted person to reimburse the city or arresting agency for the booking fee costs incurred.

In June 1994, the Superior Court established procedures to address convicted persons reimbursing arresting agencies for booking fee costs, which state in part,

Effective immediately, we will begin making the reimbursement recommendation for all bookings on or after May 1, 1994

Reimbursement should be recommended to the appropriate city and/or the County of Santa Clara in each case in which the defendant was or is in custody.

For cases in which a city has been or will be billed for a booking under this procedure, you will find an affidavit (sample attached) in the DA's file or with the police report/complaint obtained from the Municipal Court. The presence of the affidavit from either source is how we'll know when and which city should be reimbursed.¹

Once ordered by the Court, the city will be sent a copy of the order by the Superior Court Clerk for the city to collect. [Emphasis added]

The Municipal Court's procedures state that the police agency is responsible for filing a "Statement of Costs," which is the same as an affidavit, with the complaint. The court clerk then enters the date and "Statement of Costs filed" on the docket sheet and the judge's note sheet. When the judge receives the case, the judge

*Upon conviction imposes sentence/probation, and if no finding of inability to pay, orders CJAF [criminal justice administrative fee] **paid to agency**. States specific police agency and amount based on **Statement** in file.*

The court clerk then prepares a minute order, which lists the resolution of the case and any fines and fees assessed, and forwards a copy of the minute order to the arresting agency.

Based on the above information, it appears that the Superior and Municipal Courts have procedures in place that would facilitate the City being reimbursed for booking fee costs incurred. However, the City is not filing an affidavit requesting this reimbursement when they file a complaint against the person arrested. According to the SJPD officials, they are willing to start filing

¹ The document referenced was attached to the procedures; it is not included with this report, but is available upon request.

affidavits immediately, but they are also concerned that the judges, particularly in Municipal Court, will not order the defendant to reimburse the arresting agency for booking fee costs. We contacted the presiding judge of the Municipal Court to pursue this matter further.

Letter Received From The Presiding Judge Regarding Reimbursement Of Booking Fee Costs By Defendants

We initially contacted the presiding judge of the Municipal Court to determine if he would be willing to send, on our behalf, a survey to the Municipal Court judges to assess each judge's attitude regarding the assessment of booking fees against convicted persons. We received a letter back from the presiding judge that stated,

Martha Wilson talked to me recently about a possible survey of the Judges on our bench by your office relating to the imposition of booking fees assessed in criminal cases. It is further my understanding that the City of San Jose does not currently file notices with the Court regarding such recoverable costs.

Recent experience with surveys along these lines seem to point to the conclusion that the data obtained is not very useful and is many times incomplete since the Judges do not keep track of whether such fees are assessed in a particular case.

The issue of collection of booking fees has come up in other discussions among the members of our Court and since we recently changed assignments, it is no doubt a good idea to remind all the members of our bench about the available imposition of such booking fees. In the event the City of San Jose should decide to start filing notices of booking fees due, I'm sure each member of our bench will consider that request in arriving at a disposition in each criminal case arising from San Jose.² [Emphasis added]

Based on the letter from the presiding judge, it appears that the judges will consider assessing the reimbursement of booking fee costs as long as the City files the affidavit so that the courts are properly informed of the City's request.

² A copy of this letter is in Appendix B of this report.

Therefore, we recommend that the SJPd begin preparing affidavits to include in complaints filed with the District Attorney's Office. However, once the SJPd begins to file affidavits, the City needs to establish a process to ensure that convicted persons reimburse the City for the booking fee costs incurred.

The City Should Establish A Billing And Collection Process For Booking Fee Cost Reimbursements

As noted earlier, the Superior and Municipal Court procedures state that the arresting agency will receive notice from the courts that the convicted person has been ordered to pay the booking fee costs. Therefore, the City needs to establish a billing and collection process to follow up on the collection of these fees. It appears that the SJPd could perform this function as it is already doing this for emergency response costs related to driving under the influence (DUI) traffic incidents.

In 1988, the SJPd instituted an emergency response cost recovery program for DUIs. Specifically, if the City activates emergency equipment for a DUI arrest, the City bills the arrested individual for the cost of the emergency equipment. Generally, within two weeks of the incident, the SJPd sends a bill to the individual for the cost of the emergency equipment response. In addition, the City bills for any fee incurred if the individual was booked into the County Jail.³ If the SJPd does not collect the bill within thirty days, the SJPd turns the bill over to the Collection Bureau of San Jose (Collection Bureau). The Collection Bureau's fee is 20 percent of collections. To date, through this program, the SJPd has sent out approximately \$2.2 million in bills and has collected approximately \$867,000. Therefore, the SJPd

³ A sample bill is in Appendix C of this report.

has experienced almost a 40-percent collection rate in the emergency response cost recovery program for DUIs.

We also asked the Santa Clara County Department of Revenue (DOR) what its booking fee cost reimbursement experience has been for County arrests. As of February 12, 1995, the outstanding receivable balance on the reimbursement of booking fees was approximately \$92,000. As of that same date, the County had collected about \$2,800, which is only a 3-percent collection rate.

There are two reasons why the County's meager booking fee reimbursement experience should not be considered a precursor for the City should it pursue booking fee reimbursements. First, when a judge assesses various fines and fees, the judge directs the convicted person to the DOR to make payment. If the convicted person is unable to pay in full, the DOR places the individual on a payment plan. When this occurs, the DOR applies any payments received first to outstanding fines. Only after the fines are paid in full does the DOR apply payments to any fees, such as booking fees, on a pro rata basis. This means that if the court assesses three different types of fees, the DOR splits up each payment received evenly between the three fees. Secondly, the courts implemented the procedures that address the reimbursement of booking fee costs in May 1994. Thus, the DOR has been collecting booking fee costs for only ten months. In our opinion, these two factors explain the County's low collection rate. If the City performed its own billing and collection function separately, the whole issue of applying payments to fines first and fees last would be avoided. Finally, County DOR officials stated that the City would probably realize more booking fee reimbursements if it did its own billings and collections.

Accordingly, in our opinion, it would be in the City's best interest to do its own billing and collection of booking fee costs.

**The City Of San Jose Could Recoup
An Estimated \$468,000 Annually And \$825,000
On A One-Time Basis By Establishing A Billing
And Collection Process For Reimbursement Of Booking Fee Costs**

We estimated how much money the City could bill convicted persons for booking fees by analyzing two sets of information. In addition, we assumed that the City could bill those persons arrested and convicted since January 1, 1994, which is the effective date of section 29550.1 of the California Government Code. Further, we assumed the City could bill convicted persons at a rate of \$152 from January 1, 1994, to June 30, 1994, and at a rate of \$138 thereafter.

The SJPD provided us with a printout from the Law Enforcement Information Center in the California Department Of Justice which shows the disposition of adult felony arrests in 1992--the most recent year for which information was available. While the disposed cases in 1992 on this list do not necessarily correspond to the number of arrests in 1992, the SJPD feels that the information on this list is generally consistent from year to year. Accordingly, the number of disposed cases on this list reasonably approximates the number of annual convictions for which the City may be able to bill for booking fee cost reimbursements. The following is pertinent information from the printout:

Felony Arrest Dispositions	8,224
Releases	(308)
Complaints Denied	(529)
Combined Cases	<u>(7)</u>
Net Felony Complaints Filed	7,380

Of the 7,380 complaints shown above, the Municipal Court heard 2,912. This occurs when the individual plea bargains with the District Attorney's Office to avoid going to Superior Court and going through a trial. Of these 2,912 complaints, 2,274, or 78 percent, resulted in convictions. Of these 2,274

convictions, 1,815, or 80 percent, resulted in probation, probation with jail time, or assessed fines.

The Superior Court heard the remaining 4,468 complaints. Of these 4,468 complaints, 4,267, or 96 percent, resulted in convictions. Of these 4,267 convictions, 3,083, or 72 percent, resulted in probation, probation with jail time, or assessed fines.

While the same disposition information was not available for misdemeanor cases, the SJPD did provide us with a listing of adult misdemeanors arrests for 1993. For misdemeanors, the SJPD booked 18,139 individuals. For purposes of estimating the total population that would be subject to billing, we deducted 9,547 drunk in public arrests and bench warrant arrests. We did not include these arrests in our calculation because the City is exploring the use of sobering stations instead of the County Jail for drunk in public arrests and because the County no longer bills the City for bench warrant arrests. This leaves a total of 8,592 misdemeanor complaints. According to the SJPD, a conviction rate of 70 percent for these 8,592 misdemeanor arrests is a reasonable assumption. Based on a 70-percent conviction rate, 6,014 misdemeanor cases could be billed.

Thus, the total estimated population of felony (1,815 plus 3,083) and misdemeanor (6,014) cases for billing is 10,912 annually, or 909 on a monthly basis. Thus, we estimate that the City could recoup an estimated \$468,000

annually and \$825,000 on a one-time basis for booking fees. Below is the calculation we performed to arrive at these estimated amounts.

*Calculation For The Estimated \$468,000
In Annual Recouped Booking Fee Costs*

In order to estimate annual collections on booking fee cost reimbursements, we utilized the estimated population of misdemeanor and felony cases that could be billed and a booking fee rate of \$138. In addition, we utilized the 40-percent collection rate the SJPD has experienced with the DUI cost recovery program. Finally, we calculated personnel costs and the collection agency fees that would be incurred on an annual basis to bill and collect for booking fees. Table I shows our calculation.

TABLE I
CALCULATION OF \$468,000 IN ANNUAL
RECOUPED BOOKING FEE COSTS

	<u>Amount</u>	
Estimated billable population annually	10,912	
Current booking fee	<u>X 138</u>	
Total Annual Amount Billed	\$1,505,856	
Collection rate of 40%	<u>X .40</u>	
Annual Gross Collections		<u>\$602,342</u>
Less Collection Agency Fee of 20% for half of collectible amounts ⁴	(60,234)	
Less Personnel Costs	<u>(74,000)</u>	
Total Annual Costs		<u>(134,234)</u>
Net Annual Collections		<u>\$ 468,108</u>

⁴ We estimate that the SJPD collects half of the 40 percent of billings that are collected, while a collection agency collects the other half.

**Calculation For The Estimated \$825,000
In One-Time Recouped Booking Fee Costs**

In order to estimate collections on booking fee costs on a one-time basis, we utilized the estimated population of misdemeanor and felony cases that could be billed for the period of January 1, 1994, through June 30, 1995, using the previous booking fee rate of \$152 that was in effect from January 1, 1994, through June 30, 1994, and the current rate of \$138 for the one year ended June 30, 1995. In addition, we utilized the same 40-percent collection rate the SJPD has experienced with the DUI cost recovery program. Finally, we calculated the collection agency fee and a one-time cost of computer workstations for the staff performing the tasks of billing, collecting, and the record keeping of booking fee information. Our calculation for a one-time basis from January 1, 1994, to June 30, 1995, is shown in Table II.

TABLE II

**CALCULATED OF \$825,000 IN ONE-TIME
RECOUPED BOOKING FEE COSTS**

	<u>Amount</u>	
Estimated billable population per month	909	
Multiply by six months	<u>X 6</u>	
Total	5,454	
Booking fee at \$152	<u>X \$152</u>	
Total Amount Billed From 1/1/94 To 6/30/94		\$ 829,008
Estimated billable population annually	10,912	
Booking fee at \$138	<u>X \$138</u>	
Total Amount Billed From 7/1/94 To 6/30/95		<u>\$1,505,856</u>
Grand Total For Bills From 1/1/94 To 6/30/95		\$2,334,864
Collection rate of 40%		<u>X .40</u>
Gross Collections On One-Time Basis		<u>\$ 933,946</u>
Less Collection Agency Fee of 20%		
For Half of Collectible Amounts ⁵	(93,395)	
Less Computer Workstations	<u>(16,000)</u>	
Total Costs		<u>(109,395)</u>
Net One-Time Collections		<u>\$824,551</u>

In order for the SJPD to be able to establish a billing and collection process to recognize the aforementioned booking fee cost reimbursements, additional staff and equipment are necessary. The SJPD believes that two positions would be appropriate for the anticipated workload of preparing bills for an average of 200 convictions a week and the necessary monitoring of these bills. We estimated that two account clerk I positions would cost approximately \$74,000 annually. In addition, we estimated a one-time cost of \$16,000 for two computer workstations

⁵ We estimate that the SJPD collects half of the 40 percent of billings that are collected, while a collection agency collects the other half.

for the two positions noted earlier. These costs were deducted in the calculation we prepared on the estimated collections on an annual basis and one-time basis. Therefore, we recommend that the City Council provide funding for personnel and equipment necessary to implement a billing and collection process for the reimbursement of booking fee costs.

According to the SJPd, it would be an appropriate division of duties to have the Treasury Division of the Finance Department (Treasury) be responsible for collecting booking fees while the SJPd handles the billing and record keeping for booking fees. Therefore, we recommend that the SJPd and Treasury meet to discuss the logistics of having Treasury collect money on the booking fee bills that the SJPd prepares and monitors.

**Order By Judges For Convicted Persons To Reimburse City
For Booking Fees Does Not Appear Necessary**

As noted in the Background section of this report, section 29550.1 of the California Government Code has been revised to state the following:

Any city . . . whose officer or agent arrests a person is entitled to recover any criminal justice administration fee imposed by a county from the arrested person if the person is convicted of any criminal offense related to the arrest. A judgment of conviction shall contain an order for payment of the amount of the criminal justice administration fee by the convicted person, The court shall, as a condition of probation, order the convicted person to reimburse the city . . . for the criminal justice administration fee.

It appears that the first sentence in the quote above authorizes the City to bill for the booking fee incurred for any person the City arrests and who is convicted of any criminal offense related to the arrest. In our opinion, this may eliminate the need for judges to order the convicted person to reimburse the City for booking fees. Therefore, we recommend that the City Attorney's Office opine on whether it

is necessary to have a judge order the reimbursement of booking fee costs before the City can bill persons for any booking fees incurred.

CONCLUSION

Section 29550.1 of the California Government Code allows the city of San Jose (City) to recover from a convicted person the booking fees associated with that person's arrest. We estimate that the City can recoup \$468,000 in booking fees annually and \$825,000 on a one-time basis by filing affidavits with the District Attorney's Office and establishing a billing and collection process.

RECOMMENDATIONS

We recommend that the San Jose Police Department:

Recommendation #1:

Begin filing affidavits requesting reimbursement of booking fee costs incurred with each complaint filed on San Jose arrests. (Priority 2)

Recommendation #2:

Implement procedures to establish a billing and collection process for booking fee reimbursements. (Priority 2)

In addition, we recommend that the City Council:

Recommendation #3:

Provide funding for personnel and equipment necessary to establish a billing and collection process for booking fee reimbursements. (Priority 2)

Furthermore, we recommend that the San Jose Police Department and the Treasury Division of the Finance Department:

Recommendation #4:

Meet to discuss the logistics of having Treasury collect money on the booking fee bills that the San Jose Police Department prepares and monitors.
(Priority 2)

Finally, we recommend that the City Attorney's Office:

Recommendation #5:

Opine on whether it is necessary for a judge to order the reimbursement of booking fees before the City can bill arrested and convicted persons for any booking fees incurred. (Priority 2)

Recommendations Requiring Budget Action

Of the preceding recommendations, #2 and #3 may not be able to be implemented absent additional funding. Accordingly, the City Manager should request during the 1995-96 budget process that the City Council appropriate an amount sufficient to implement recommendations #2 and #3.

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